

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

5:07cv103

RING INDUSTRIAL GROUP, LP,)
)
 Plaintiff,)
)
 Vs.)
)
 E Z SET TANK COMPANY, INC., d/b/a)
 E-Z SET COMPANY;)
 INTERNATIONAL CUSHIONING)
 CORP.; INTERNATIONAL)
 CUSHIONING COMPANY LLC; and)
 ICC TECHNOLOGIES INC.,)
)
 Defendants.)
 _____)

ORDER

THIS MATTER is before the court on the following pleadings:

- (1) plaintiff's Application for Fees Related to Motions to Compel (#89);
- (2) plaintiff's Brief in Support of Application for Fees related to Plaintiff's Motions to Compel (#90);
- (3) defendants' Brief in Support of Defendants' Opposition to Plaintiff's Application for Fees Related to Motions to Compel (#91); and
- (4) plaintiff's Reply Brief in Support of Its Application for Fees Related to Its Motion to Compel (#92).

The court also has before it some 243 pages of supporting materials submitted by plaintiff. (#90-2 through 90-8).

While it appears that the issues have been fully briefed, Rule 37(a)(5)(A), Federal Rules of Civil Procedure, provides in relevant part, that

[i]f the motion [to Compel] is granted — or if the disclosure or requested discovery is provided after the motion was filed — the court must, ***after giving an opportunity to be heard***, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees.

Fed.R.Civ.P. 37(a)(5)(A)(emphasis added). The court must, therefore, comply with the rule and afford the parties an opportunity to heard. All counsel are, in the interim, encouraged to use best efforts at resolving this issue in advance of such hearing so that additional expenses will not be incurred. If the matter cannot be resolved but the parties agree they do not wish to be heard other than through their previously filed written presentations the parties shall advise the court of such decision on or before July 16, 2008.

ORDER

IT IS, THEREFORE, ORDERED that the plaintiff's Application for Fees Related to Motions to Compel (#89) is **CALENDARED** for hearing at 2 p.m. on Friday, July 18, 2008, in Asheville.

The deadline for communication of an amicable resolution of the pending motion or the joint decision not to present oral arguments is the close of business on Wednesday, July 16, 2008.

Signed: July 10, 2008

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

